CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
CHANDIGARH

REGIONAL BENCH - COURT NO. I

Service Tax Appeal No. 60402 of 2024

[Arising out of Order-in-Appeal No. CHD-EXCUS-001-APP-11/2024-25 dated 17.04.2024 passed by the Commissioner (Appeals), CGST Chandigarh]

M/s Vijay Kumar Sharma **......Appellant**
157, Burail, Sector 45
Chandigarh 160045

VERSUS

Commissioner of Central Excise and Service Tax, Chandigarh-I **......Respondent**
Central Revenue Building, Plot No. 19,
Sector 17-C, Chandigarh 160017

APPEARANCE:

Shri Ashok Goyal C.A. and Shri Sahil Garg, C.A., for the Appellant

Shri Varun Sharma, Authorized Representative for the Respondent

CORAM: HON'BLE MR. S. S. GARG, MEMBER (JUDICIAL)

FINAL ORDER NO. 60465/2026

DATE OF HEARING: 20.05.2026
DATE OF DECISION:24.07.2026

The present appeal is directed against the impugned order dated 17.04.2024 passed by the Commissioner (Appeals), Chandigarh, whereby the learned Commissioner (Appeals) has reduced the demand of service tax from Rs. 5,53,451/- to Rs. 1,31,122/-.

2. Briefly the facts of the present case are that the appellant is a Works Contractor providing service of woodworks, construction, installation, and other related services to, various parties including the educational institutions and clinical establishments, in the capacity of main contractor and sub-contractor also; that on the basis of third party data received from the Income Tax Department for the year 2014-2015, it was observed that there were receipts from services as per income tax returns and no ST-3 returns were filed by the appellant and no tax was deposited. Accordingly, a show cause notice dated 28.09.2020 was issued alleging that the appellant was providing taxable services but did not obtain service tax registration and hence demanding the recovery of service tax amounting to Rs. 5,53,451/- and penalties under Section 77 and 78 of the Act were also proposed to be imposed. After following the due process, the adjudicating authority confirmed the demand along with interest under Section 73 and 75 of the Act and also confirmed the demand and penalty of Rs. 10,000/- each under Section 77 and equal penalty under Section 78 of the Act was also imposed. Aggrieved by the said order, the appellant filed the appeal before the Commissioner (Appeals) who dropped the demand of Rs. 4,22,329/- and only confirmed the demand of service tax of Rs. 1,31,122/- against which the appellant filed the present appeal on various grounds.

3. Heard both the parties and perused the material on record.

4. Learned consultant for the appellant submits that the impugned order is not sustainable in law on merits as well as on limitation and is liable to be set aside. He further submits that the show cause notice date is 28.09.2020 and the disputed period pertains to October, 2014 to March, 2015. He further submits that the entire demand is barred by limitation and the Department has not established any of the ingredients which are required to invoke the extended period of limitation namely suppression of material facts with intend to evade payment of tax. He further submits that no malafied intention or deliberate suppression can be attributed to the appellant in the present case because the appellant was operative under a bonafide belief that the services rendered by him were only exempt under entry no. 12 and entry no. 29(h) of the Notification No. 25/2012-ST and therefore there existed no intention whatsoever to evade payment of service tax. He further submits that allegation of suppression merely on account of non-registration is baseless and unsustainbale in law. He further submits that the learned Commissioner (Appeals) while partially allowing the appeal vide impugned order dated 17.04.2024, himself recorded a categorical finding that the demand pertaining to the period April 2014 to September 2014 was barred by limitation and accordingly dropped demand amounting to Rs. 4,22,329/- out of the total demand of Rs. 5,53,451/-. He further submits that despite recording such finding, the learned Commissioner (Appeals) wrongly sustained the remaining demand of Rs. 1,31,122/- pertaining to the period

October 2014 to March 2015 by mechanically applying the extended period.

4.1 The learned consultant further submits that the mechanical invocation of the extended period of limitation by the department is entirely based on a fundamental misconception of law. The revenue has merely relied upon the third-party data for recovery of service tax calculated on the gross amounts received on account of supply of services from operations in their Form 26AS/Income Tax after deduction of TDS by their deductors to allege suppression of facts. He also submits that a mere difference between the income tax data and service tax disclosures, without any corroborative evidence of intentional concealment, cannot be equated with fraud or deliberate suppression to justify extending the limitation period. In support of his submissions, he relied upon the following decisions:

- ***Antares Services (P.) Ltd. vs. Commissioner of Central Excise [2024] 160 taxmann.com 23 (Chandigarh CESTAT)***
- ***M/s Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur reported in 2013 (31) Taxmann.com 67 (SC).***

5. On the other hand, learned authorized representative for the Revenue reiterated the findings of the impugned order.

6. I have considered the submissions of both the parties and perusals of the material on record, I find that in the entire case has

been made against the appellant only on the basis of third party data received from the Income Tax Department for the year 2014-2015. Further, I find that in the present case, the show cause notice was issued on 28.09.2020 for the period from October, 2014 to March, 2015 by invoking the extended period of limitation. I also find that in the present case the appellant has a bonafide belief that he is not liable to pay service tax because the services rendered by him are only exempt under entry no. 12 and entry no. 29(h) of Notification No. 25/2012-ST, therefore, there was no intention to evade payment of service tax. I also find that the learned Commissioner (Appeals) in the impugned order has dropped the substantial demand amounting to Rs. 4,22,329/- out of the total demand of Rs. 5,53,451/- by categorically holding that the demand pertaining to the period from April, 2014 to September, 2014 was barred by limitation. Further, I find this Tribunal in the case ***M/s Antares Services (P.) Ltd. vs. Commissioner of Central Excise***, (cited Supra), wherein, it was held that the demand raised by the Department by invoking the extended period on limitation entirely on the basis of third party information and data obtained from the Income Tax Department is not sustainable, the Tribunal vide setting aside the demand on the ground of limitation observed as under:

> "I find that the show-cause notice has been issued on the basis of third-party information. I find that though extended period has been invoked, no evidence of suppression, mis-statement, fraud, collusion etc., has been put forth. In the absence of the same, extended

> period cannot be invoked. I find that the Tribunal in the case of Balaji Machinery (supra) held that where the demand is merely on the basis of data obtained from Income-tax Department, it cannot be alleged that there was suppression etc. to justify the invocation of extended period. Therefore, I find that the impugned order is not legally sustainable.”

7. Further, I find that the law laid down by the various Benches of the Tribunal and the Hon’ble Apex Court in the case ***of M/s Uniworth Textiles Ltd. Vs. Commissioner of Central Excise, Raipur,*** (cited Supra), wherein, the Hon’ble Apex Court has examined the statutory pre-requisites for invoking the extended period of limitation and dealt with the issue of whether every non-payment can be termed as a willful default. The Hon’ble Apex Court has held as under:

> "Every non-payment/non-levy of tax doesn't attract extended period. There must be some positive action which betrays negative intention of wilful default. For operation of extended period of limitation, intention to deliberately default is a mandatory prerequisite and inadvertent non-payment doesn't attract extended period of limitation. Burden of proving mala fide on part of assessee lies on shoulders of Department who alleges it and assessee cannot be asked to substantiate his bona fide conduct."
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> Para 12 (Page-9)
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> The conclusion that mere non-payment of duties is equivalent to collusion or willful misstatement or

suppression of facts is, in our opinion, untenable. If that were to be true, we fail to understand which form of non-payment would amount to ordinary default? Construing mere non-payment as any of the three categories contemplated by the proviso would leave no situation for which, a limitation period of six months may apply. In our opinion, the main body of the Section, in fact, contemplates ordinary default in payment of duties and leaves cases of collusion or willful misstatement or suppression of facts, a smaller, specific and more serious niche, to the proviso. Therefore, something more must be shown to construe the acts of the appellant as fit for the applicability of the proviso."

8. In view of the above discussions, I find that the impugned order is not sustainable on limitation and I set aside the same on limitation without going into the merits of the case.

9. The appeal is accordingly allowed on limitation.

(Order pronounced in the open court on 24.07.2026)

(S. S. GARG)
MEMBER (JUDICIAL)

Kailash